

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4622 of 1986

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

R A RAJGURU

Versus

STATE OF GUJARAT

Appearance:

MR MANOJ N POPAT for Petitioners
MR PREMAL JOSHI for
M/s.PATEL ADVOCATES for Respondent No. 1
MR AD OZA for Respondent No. 2
MR SV RAJU for Respondent No. 3
MR MTM HAKIM for Respondent No. 9
MR IS SUPEHIA for Respondent No. 17,28,29,30,31,32,
33,34,35,36,37
MR CL SONI for Respondent No. 27

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 12/06/2000

ORAL JUDGEMENT

Heard learned Advocate Mr. Oza for the respondent no.2 and the learned AGP Mr. Premal Joshi for Respondent No.1 and learned advocate Mr. S.V Raju for respondent Nos. 3 to 8 and 10 to 16. Rest of the respondents are served. Learned advocate Mr. Girish Patel appearing for the petitioner is not present on call.

2. The petitioners before this Court, 40 in number, are the employees of Gujarat Secondary Education Board, the respondent no. 2 herein [hereinafter referred to as, 'the Board']. Pending this petition, seven of the writ petitioners successfully took the selection test given by the Board and their services have been regularized from the date of their selection. The names of said writ petitioners have been deleted by order dated 22nd October, 1996. It is the claim of the petitioners that petitioners' names were sponsored either by the Employment Exchange Officer or by the Social Welfare Officer for appointment in the Board. The Board, after receiving the names of the petitioners and after holding interviews, had appointed the petitioners on daily wages. The petitioners have been serving with the Board on daily wages for a long period continuously. Nonetheless, the petitioners are treated as ad hoc employees appointed on temporary basis and their services are sought to be terminated. It is contended that the nature of duties performed by the petitioners are perinniel and the petitioners having been appointed after due procedure, their services are required to be treated as regular service. The petitioners, therefore, have prayed that the order of termination of their services be set aside; the services of the petitioners be regularized and they be permanently absorbed in the cadre of Junior Clerk on the basis of total length of service rendered by them, without asking them to take any test/examination/interview or selection for the same.

3. The petition is contested by the Board. It is contended that apart from the regular staff of the Board, the Board recruits certain daily wage employees/apprentice to man the additional workload during the time of examination held in the months of March and October every year. These appointments are made purely on temporary basis to meet the additional workload alone. It is further contended that their selection and appointments are made on daily wages. The attempt of the Board to regularise their services by giving them test has failed on account of want of

cooperation by the petitioners. The appointments having been made on daily wages, the petitioners cannot claim automatic regularization in service.

4. The averments made in the petition are not supported by documentary evidence i.e., neither appointment orders nor the termination orders have been placed on the records. Only order which is placed on record is of 12th August, 1986 whereby one M.R Parmar, petitioner no. 5 has been informed that his services were not required with effect from 12th August, 1986 and that he would be called upon as and when his services are required. However, this is not sufficient to hold that the services of all the petitioners have been terminated in the like manner. Further, in the affidavit made by one Naranbhai H. Mochi, petitioner no. 39 as late as on 13th September, 1999, it is stated that all the petitioners continue in service till the date. The said averment is reiterated by the said petitioner in his Affidavit dated 27th January, 2000. Hence, to me, it appears that on the date of the petition, services of the petitioners were yet not terminated nor was any order made in respect of the termination of their services. Further, the respondent no. 5 Shri M.R Parmar also appears to have continued in service inspite of the order of termination dated 12th August, 1986 and in that view of the matter, no cause of action can be said to have accrued to the petitioners and the petition should be held to be premature to that extent.

5. The petitioners' claim for regularization in service also is not tenable. It is evident that petitioners were never selected for regular appointment. It should make a hell of a difference when a person is being interviewed for a permanent employment and when one is being interviewed for appointment on daily wages for temporary arrangement. Merely because the petitioners' names have been sponsored by the Employment Exchange Officer or the Social Welfare Officer, as the case may be, they cannot seek regularization in service irrespective of terms of their appointment. The action of the Board in giving test to such employees before offering them permanent employment is absolutely just and legal. Such action cannot be vitiated as claimed by the petitioners. It further appears that respondents nos. 3 to 37 are the employees of the Board who have been selected and appointed on the permanent establishment. Some of those employees were initially appointed on daily wages alongwith the petitioners herein. However, since they successfully took the selection test, their services have been regularized from the date of their selection.

The action of the Board in regularizing the services of such employees who have successfully undergone the selection test cannot be faulted with. However, considering the long service rendered by these petitioners, it should be justiciable that these petitioners are given an opportunity for regular selection as and when such selections are being made. It is, therefore, directed that as and when regular selections are made, the Board shall also consider the case of the petitioners for regular selection, irrespective of the age-bar which may be faced by such petitioners, provided the concerned petitioners are were within the age limit on the date of their first appointment.

6. Subject to the above observations, the petition is dismissed. Rule is discharged.

Prakash*